

MINA' TRENTAI UNU NA LIHESLATURAN GUAHAN
2011 (FIRST) Regular

Bill No. 322-31 (COE)

Introduced by:

D.G. RODRIGUEZ, JR. 

AN ACT TO REQUIRE PARENTAL CONSENT
FOR THE CONDUCT OF AN ABORTION UPON
A MINOR, BY ADDING A NEW CHAPTER 4A
TO TITLE 19, GUAM CODE ANNOTATED.

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BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Short Title. This Act may be cited as the *“Parental Consent for Abortion Act.”*

Section 2. Legislative Findings and Intent: (a) *I Liheslaturan Guåhan* finds:

1. Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences.
2. The medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the patient is immature.

1 3. The capacity to become pregnant and the capacity for mature
2 judgment concerning the wisdom of an abortion are not necessarily
3 related.

4 4. Parents ordinarily possess information essential to a physician's
5 exercise of his or her best medical judgment concerning the child.

6 5. Parents who are aware that their minor daughter has had an
7 abortion may better ensure that she receives adequate medical
8 attention after her abortion.

9 6. Parental consultation is usually desirable and in the best interest of
10 the minor.

11 (b) It is the intent of *I Liheslaturan Guåhan* in enacting this parental
12 consent law to further the important and compelling interests of:

13 1. Protecting minors against their own immaturity.

14 2. Fostering family unity and preserving the family as a viable
15 social unit.

16 3. Protecting the constitutional rights of parents to rear
17 children who are members of their household.

18 4. Reducing teenage pregnancy and unnecessary abortion.

19 5. In light of the foregoing statements of purpose, allowing for
20 the judicial bypasses of the parental consent requirement to be
21 made only in exceptional or rare circumstances.

1 that the minor intends to seek an abortion and that the affiant
2 consents to the abortion.

3 (d) "*Department*" means the Department of . . .

4 (e) "*Emancipated minor*" means any person under eighteen (18)
5 years of age who is or has been married or who has been legally
6 emancipated.

7 (f) "*Incompetent*" means any person who has been adjudged a
8 disabled person and has had a guardian appointed for her
9 pursuant to judicial proceeding and determination.

10 (g) "*Medical emergency*" means a condition that, on the basis of the
11 physician's good-faith clinical judgment, so complicates the
12 medical condition of a pregnant woman as to necessitate the
13 immediate abortion of her pregnancy to avert her death or for
14 which a delay will create serious risk of substantial and
15 irreversible impairment of a bodily function.

16 (h) "*Neglect*" means the failure of a parent or legal guardian to
17 supply a child with necessary food, clothing, shelter, or medical
18 care when reasonably able to do so or the failure to protect a child
19 from conditions or actions that immediately and seriously
20 endanger the child's physical or mental health when reasonably
21 able to do so.

22 (i) "*Physical abuse*" means any physical injury intentionally
23 inflicted by a parent or legal guardian on a child.

1 (j) *“Physician”* or *“attending physician”* means any person licensed
2 to practice medicine on Guam. The term includes medical doctors
3 and doctors of osteopathy.

4 (k) *“Sexual abuse”* means any sexual conduct or sexual penetration
5 as defined in §25.10(a)(8) and (9) of Chapter 25, Title 9, Guam
6 Code Annotated, and committed against a minor by an adult
7 family member as defined in this Act or a family member as
8 defined in Chapter 13 of Division 1, Title 19, Guam Code
9 Annotated, and as further provided for in Chapter 25, Title 9,
10 Guam Code Annotated.

11 **§4402. Consent of One Parent Required.** Except in the case of a
12 medical emergency, or except as provided in Sections §4403, §4404, or
13 §4407, if a pregnant woman is less than 18 years of age and not
14 emancipated, or if she has been adjudged an incompetent person pursuant
15 to judicial proceeding and determination, no person shall perform an
16 abortion upon her unless, in the case of a woman who is less than 18 years
17 of age, he or she first obtains the notarized written consent of both the
18 pregnant woman and one of her parents or a legal guardian; or, in the case
19 of a woman is an incompetent person, he or she first obtains the notarized
20 written consent of her guardian. In deciding whether to grant such
21 consent, a pregnant woman’s parent or guardian shall consider only the
22 child’s or ward’s best interests.

1 **§4403. Alternate Consent.** If the minor patient declares in a signed
2 written statement the she is a victim of sexual abuse, neglect, or physical
3 abuse by either of her parents or legal guardian(s), then the attending
4 physician shall obtain the notarized written consent required by this Act
5 from a brother or sister of the minor who is over 21 years of age, or from a
6 stepparent or grandparent specified by the minor. The physician who
7 intends to perform the abortion must certify in the patient’s medical record
8 that he or she has received the written declaration of abuse or neglect. Any
9 physician relying in good faith on a written statement under this Section
10 shall not be civilly or criminally liable under any provisions of this Act for
11 failure to obtain consent.

12 **§4404. Exceptions.** Consent shall not be required under Section 4 or
13 5 of this Act, if:

- 14 1. The attending physician certifies in the patient’s medical
15 record that a medical emergency exists and there is insufficient
16 time to obtain the required consent; or
- 17 2. Consent is waived under §4407 of this Chapter.

18 **§4405. Coercion Prohibited.** A parent or any other person shall not
19 coerce a minor to have an abortion performed. If a minor is denied
20 financial support by the minor’s parents, guardian, or custodian due to the
21 minor’s refusal to have an abortion performed, the minor shall be deemed
22 emancipated for the purposes of eligibility for public-assistance benefits,
23 except that such benefits may not be used to obtain an abortion.

1 **§4406. Reports.** A monthly report indicating the number of consents
2 obtained pursuant to this Act, the number of times in which exceptions
3 were made to the consent requirement under this Act, the type of
4 exception, the minor's age, and the number of prior pregnancies and prior
5 abortions of the minor *shall* be filed with the Department of Public Health
6 & Social Services on forms prescribed by the Department. A compilation of
7 the data reported shall be made by the Department on an annual basis and
8 shall be available to the public.

9 **§4407. Procedure for Judicial Waiver of Consent.** (a) The
10 requirements and procedures under this Section are available to minors
11 and incompetent persons whether or not they are residents of Guam.

12 (b) The minor or incompetent person may petition the Superior
13 Court of Guam for a waiver of the consent requirement and may
14 participate in proceeding on her own behalf. The petition shall include a
15 statement that the complainant is pregnant and unemancipated. The
16 petition shall also include a statement that consent has not been waived
17 and that the complainant wishes to abort without obtaining consent as
18 provided pursuant to this Chapter. The court shall appoint a guardian *ad*
19 *litem* for her. Any guardian *ad litem* appointed under this Act shall act to
20 maintain the confidentiality of the proceedings.

21 The court shall advise her that she has a right to court-appointed
22 counsel and shall provide her with counsel upon her request.

1 (c) Court proceedings under this Section shall be confidential and
2 shall ensure the anonymity of the minor or incompetent person. All court
3 proceedings under this Section shall be sealed. The minor or incompetent
4 person shall have the right to file her petition in the court using a
5 pseudonym or using solely her initials. All documents related to this
6 petition shall be confidential and shall not be available to the public. These
7 proceedings shall be given precedence over other pending matters to the
8 extent necessary to ensure that the court reaches a decision promptly. The
9 court shall rule, and issue written findings of fact and conclusions of law,
10 within 48 hours of the time the petition was filed, except that the 48-hour
11 limitation may be extended at the request of the minor or incompetent
12 person. If the court fails to rule within the 48-hour period and an extension
13 was not requested, then the petition shall be deemed to have been granted,
14 the consent requirement shall be waived.

15 (d) If the court finds, by clear and convincing evidence, that the
16 minor is both sufficiently mature and well-informed to decide whether to
17 have an abortion, the court shall issue an order authorizing the minor to
18 consent to the performance or inducement of an abortion without the
19 consent of a parent or guardian and the court shall execute the required
20 forms. If the court does not make the finding specified in this
21 subparagraph or subparagraph (e) of this Section, it shall dismiss the
22 petition.

1 (e) If the court finds, by clear and convincing evidence, that there is a
2 pattern of physical, sexual, or emotional abuse of the complainant by one
3 or both of her parents, her guardian, or her custodian, or that that the
4 notification of a parent or guardian is not in the best interest of the
5 complainant, the court shall issue an order authorizing the minor to
6 consent to the performance or inducement of an abortion without the
7 consent of the parent or guardian. If the court does not make a finding
8 specified in this subparagraph or subparagraph (d) of this Section, it shall
9 dismiss the petition.

10 (f) A court that conducts proceedings under this Section shall issue
11 written and specific factual findings and legal conclusions supporting its
12 decision and shall order that a confidential record of the evidence and the
13 judge's findings and conclusions be maintained. At the hearing, the court
14 shall hear evidence relating to the emotional development, maturity,
15 intellect, and understanding of the minor.

16 (g) An expedited confidential appeal shall be available, as the
17 Supreme Court of Guam provides by rule, to any minor or incompetent
18 person to whom the [circuit] court denies a waiver of consent. An order
19 authorizing an abortion without consent shall not be subject to appeal.

20 (h) No filing fees shall be required of any pregnant minor who
21 petitions the court for a waiver of parental consent pursuant to this Act at
22 either the trial or appellate level.

1 **§4408. Appeal Procedure.** The Unified Judiciary of Guam is
2 respectfully requested to establish rules to ensure that proceedings under
3 this Act are handled in an expeditious and confidential manner, and to
4 satisfy the requirements of the federal courts.

5 **§4409. Penalties.** (a) Any person who intentionally performs an
6 abortion with knowledge that or with reckless disregard as to whether the
7 person upon whom the abortion is to be performed is an unemancipated
8 minor or an incompetent without obtaining the required consent is guilty
9 of a misdemeanor.

10 It is a defense to prosecution under this section that the minor falsely
11 represented her age or identity to the physician to be at least 18 years of
12 age by displaying an apparently valid governmental record of
13 identification such that a careful and prudent person under similar
14 circumstances would have relied on the representation. The defense does
15 not apply if the physician is shown to have had independent knowledge of
16 the minor's actual age or identity or failed to use due diligence in
17 determining the minor's age or identity.

18 (b) Failure to obtain consent from person(s) from whom consent is
19 required under this Act is *prima facie* evidence of failure to obtain consent
20 and of interference with family relations in appropriate civil actions. Such
21 *prima facie* evidence shall not apply to any other issue other than failure to
22 inform the parents or legal guardian and interference with family relations
23 in appropriate civil actions. The civil action may be based on a claim that

1 the at as a result of simple negligence, gross negligence, wantonness,
2 willfulness, intention, or other legal standard of care. The laws of Guam
3 shall not be construed to preclude the award of exemplary damages in any
4 appropriate civil action relevant to violations of this Act. Nothing in this
5 Act shall be construed to limit the common law rights of the parents or
6 legal guardians.

7 (c) Any person not authorized to provide consent under this Act
8 who provides consent is guilty of a misdemeanor.

9 (d) Any person who coerces a minor to have an abortion is guilty of
10 a misdemeanor.

11 **§4410. Construction.** (a) Nothing in this Chapter shall be construed
12 or interpreted as making the conduct of an abortion illegal; when
13 conducted pursuant to applicable law, this Chapter, and performed by a
14 licensed medical physician.

15 **§4411. Severability.** If any provision of this law or its application to any
16 person or circumstance is found to be invalid or contrary to law, such invalidity
17 shall *not* affect other provisions or applications of this law which can be given
18 effect without the invalid provisions or applications, and to this end the provisions
19 of this Act are severable.”

20 **Section 3. Effective Date.** This Act shall become immediately
21 effective upon enactment.